

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

WILLIAM THOMAS UMFLEET v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Davidson County
No. 99-C-1780 J. Randall Wyatt, Jr., Judge**

No. M2003-00815-CCA-R3-PC - Filed October 19, 2004

The Defendant, William Thomas Umfleet, appeals from the order of the trial court dismissing his petition for post-conviction relief as time-barred. The State has filed a motion requesting that this Court affirm the judgment of the trial court pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. We grant the State's motion and affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed Pursuant to Rule 20, Rules of the Tennessee Court of Criminal Appeals

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Mike J. Urquhart, Nashville, Tennessee, for the appellant, William Umfleet.

Paul G. Summers, Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Victor S. Johnson, District Attorney General; and Michael Rohling, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The record reflects that on May 11, 2000, the Defendant pleaded guilty to and was convicted of burglary and was sentenced to six years and one day as a Range I standard offender. He was ordered to serve ninety days in confinement, with the balance to be served on probation. Subsequently, a probation violation hearing was conducted on July 26, 2001, after which the trial court revoked the Defendant's probation and ordered the balance of his sentence served in confinement. On August 5, 2002, the Defendant filed a petition seeking post-conviction relief. The trial court conducted a hearing on the post-conviction petition and subsequently entered an order dismissing the petition as time-barred. It is from this order that the Defendant appeals.

It apparent that the one-year statute of limitations for seeking post-conviction relief from the Defendant's May 11, 2000 conviction for burglary expired long before the post-conviction petition

was filed on August 5, 2002. The Defendant so concedes. Nevertheless, the Defendant argues that the one-year statute of limitations should not start running until July 26, 2001, the date that the Defendant's probation was revoked and he was ordered to serve the balance of his sentence in confinement. The Defendant argues that with this triggering date for the commencement of the statute of limitations, his petition was timely filed.

As pointed out by the State, this court has held that our post-conviction procedure act does not permit the filing of a petition to attack collaterally the validity of a proceeding to revoke probation. Young v. State, 101 S.W.3d 430, 433 (Tenn. Crim. App. 2002). A proceeding to revoke suspension of a sentence and probation is independent of the initial conviction and sentencing. Id. at 432. We believe it is clear that Young stands for the proposition that the statute of limitations for filing a post-conviction proceeding begins to run from the date of entry of the judgment of the conviction and sentencing, and the statute of limitations is not revived by a subsequent revocation of probation. Accordingly, the trial court properly concluded that the Defendant's petition for post-conviction relief was time-barred. The petitioner also seeks to argue on appeal that the dismissal of his post-conviction petition violates the equal protection clause of both the United States and the Tennessee Constitutions. This issue was not raised in the trial court and we therefore decline to consider it because it has been raised for the first time on appeal.

Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Court of Criminal Appeals.

DAVID H. WELLES, JUDGE